IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3537 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MADANSINH KHENGARSINH DEVDA

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 3537 of 2002

MS BANNA DATTA FOR MR MC BAROT for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 08/05/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 8-2-2002 passed by the District Magistrte, Banaskantha at Palanpur and he has

been branded as a bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner at length and learned AGP, Mr.S.J.Dave for the respondents. I have also perused the material on record. Learned advocate for the petitioner has submitted that detention order was passed relying upon a solitary offence registered against the petitioner under the Prohibition Act. She has also submitted that no statements were recorded of the witnesses.

4. Learned advocate for the petitioner has contended that the detaining authority has positively recorded a satisfaction that the activities of the detenu are detrimental to public health and public order. It is also recorded that this satisfaction is arrived at on the basis of documents available. She has submitted that there is nothing on record to indicate that the activities of the detenu are detrimental to public order. According to her, there is no awareness as regards the aspect of the detenue being in custody or not and therefore, the satisfaction recorded by the authority is without basis and exercise of powers under Section 3 of the PASA Act would therefore be vitiated. She has further submitted that since a co-detenu has been released by this Court vide judgment and order dated 8-5-2002 passed in Special Civil Application No.3536 of 2002, present detenu may also be released.

5. Learned Asstt. Govt. Pleader Mr.S.J.Dave has opposed this petition. However, he could not indicate any material from the detention papers to show the activities of the detenu caused any disturbance to public order. The only material against the detenu is the registered prohibition cases wherein also there is nothing to indicate any disturbance of public order.

6. Having regard to the rival side contentions, the petition can be accepted on the ground canvassed by the learned counsel for the petitioner. In absence of any material to indicate that the satisfaction recorded by the detaining authority for the need for exercise of powers under Section 3 of the PASA Act was genuine, the order cannot stand. If the satisfaction is recorded that

the activities of the detenu are detrimental to public order, that satisfaction is without basis and exercise of power under section 3 of the PASA on that would be vitiated. Consequently, the detention also. Moreover, detenu is entitled to be released on the ground of parity also since a co-detenu has been released by this Court Civil Application No.3536 of 2002.

7. The petition is allowed. The impugned order of detention dated 8-2-2002 passed against the detenu is hereby quashed and set aside. The detenu Madansinh Khengarsinh Devda is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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